

**UNITED STATES DISTRICT COURT**

***DISTRICT OF MAINE***

***PERRY CONGER,***

Plaintiff

**v.**

**JO ANNE B. BARNHART,**  
*Commissioner of Social Security,*

***Defendant***

***Docket No. 03-53-B-W***

## REPORT AND RECOMMENDED DECISION<sup>1</sup>

This Supplemental Security Income (“SSI”) appeal raises the question whether substantial evidence supports the commissioner’s determination that the plaintiff is ineligible for SSI benefits on the ground of flight to avoid prosecution in the Commonwealth of Massachusetts. I recommend that the decision of the commissioner be affirmed.

Following a hearing at which the plaintiff appeared with counsel, *see* Record at 16-25, the administrative law judge found, in relevant part, that the plaintiff, a resident of Maine, had filed an application for SSI benefits protectively on May 31, 2001, Finding 1, *id.* at 14; that a default warrant had been issued

<sup>1</sup> This action is properly brought under 42 U.S.C. § 1383(c)(3). The commissioner has admitted that the plaintiff has exhausted his administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which he seeks reversal of the commissioner's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on December 11, 2003, pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

by the Gardner District Court on November 30, 1990, Finding 2, *id.*; that the default warrant dated November 30, 1990 was still outstanding, Finding 3, *id.*; that a complaint against the plaintiff had been issued by the Gardner District Court on May 7, 1990 on two misdemeanor counts and one felony count, assault with a dangerous weapon, Finding 4, *id.*; that he failed to appear to answer charges at the recall hearing on June 4, 1990 after recognizance, and default resulted, Finding 5, *id.*; and that he fled the Commonwealth of Massachusetts to avoid prosecution and therefore, pursuant to section 202(e) of Public Law 104-193 and section 1611(e)(5) of the Social Security Act, should not be considered an eligible individual for purposes of the SSI program, Finding 6, *id.* The Appeals Council declined to review the decision, *id.* at 2-3, making it the final determination of the commissioner, 20 C.F.R. § 416.1481; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. § 1383(c)(3); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusion drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The plaintiff complains that the administrative law judge (i) misconstrued applicable statutory and regulatory language regarding his eligibility for SSI benefits, (ii) provided insufficient notice of the subject matter of his hearing, transgressing his constitutional right to due process of law, and (iii) rendered a decision that is, in any event, unsupported by substantial evidence of record. *See generally* Plaintiff's Itemized Statement of Specific Errors ("Statement of Errors") (Docket No. 8). I am unpersuaded.

## II. Discussion

### A. Legal and Factual Context

The plaintiff asserts, and my research confirms, that he raises an issue of first impression in challenging a denial of SSI benefits grounded on alleged fugitive-felon status. *See id.* at 4. The provision pursuant to which his claim was denied, enacted as part of Public Law 104-193 (otherwise known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or “PRWORA,”) provides in relevant part:

(4) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is –

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(B) violating a condition of probation or parole imposed under Federal or State law.

42 U.S.C. § 1382(e)(4); Historical and Statutory Notes to *id.*; H.R. Rep. No. 104-651 (“PRWORA Report”), at 1381-82 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2440-41.<sup>2</sup> In a section titled “Reason for Change,” the PRWORA Report noted: “The committee proposal emphasizes that assistance through the SSI program is intended for the aged, blind, and disabled. Fleeing convicts or probation or parole violators should not be supported through Federal benefits.” PRWORA Report at 1382, *reprinted in* 1996 U.S.C.C.A.N. at 2441.

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<sup>2</sup> Technically, section 202(a) of the PRWORA added a new paragraph to section 1611(e) of the Social Security Act (section 1611(e)(5)) to effectuate this change. *See* PRWORA, Pub. L. No. 104-193, §§ 200, 202, 110 Stat. 2105 (1996).

On June 30, 2000 the commissioner issued final rules implementing this change. *See Denial of Supplemental Security Income (SSI) Benefits for Fugitive Felons and Probation and Parole Violators* (“Commentary”), 65 Fed. Reg. 40,492 (June 30, 2000). Affected rules included 20 C.F.R. §§ 416.202 and 416.1339. *See id.* Section 416.202, which bears directly on the claim in issue, provides in relevant part:

You are eligible for SSI benefits if you meet all of the following requirements:

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(f) You are not –

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

20 C.F.R. § 416.202(f). Section 416.1339, in turn, directs suspension of benefits during any month in which an individual is, *inter alia*, fleeing to avoid prosecution, providing in relevant part:

(b) *Suspension effective date.* (1) Suspension of benefit payments [on the basis of fugitive or probation or parole violator status] is effective with the first day of whichever of the following months is earlier –

(i) The month in which a warrant or order for the individual’s arrest or apprehension, an order requiring the individual’s appearance before a court or other appropriate tribunal (*e.g.*, a parole board), or similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual –

(A) Is fleeing, or has fled, to avoid prosecution . . . ;

(B) Is fleeing, or has fled, to avoid custody or confinement after conviction . . . ;

(C) Is violating, or has violated, a condition of his or her probation or parole . . . ;

or

(ii) The first month during which the individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her

probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.

20 C.F.R. § 416.1339(b).

In promulgating these final rules, the commissioner commented, *inter alia*:

We recognize that many SSI applicants do not report their status under section 1611(e)(5) of the [Social Security Act] to us. Thus, we will not depend on the reports of the individual recipient or applicant for information that he or she is fleeing prosecution, custody or confinement or violating a condition of probation or parole. We will seek law enforcement information in determining whether someone is ineligible under this provision. Our principal source will be records of Federal and State law enforcement agencies and penal institutions, but we will continue to explore all avenues of information which will help us decide whether individuals are ineligible, particularly under the provisions of section 1611(e)(5) of the [Social Security Act].

Commentary, 65 Fed. Reg. at 40,493. In response to a comment that “the proposed regulations fail to say whether or not an individual must be aware that he or she has been indicted for an alleged criminal act,” the commissioner observed:

We have no way of determining whether or not an individual is aware that he or she is wanted for a criminal offense and is knowingly fleeing from prosecution. We must rely on official reports and other similar determinations from various law enforcement agencies that an individual is fleeing to avoid prosecution.

*Id.* at 40,494. The commissioner disagreed with a comment expressing “concern about the overly strict implementation of this statute and the impact it will have on petty criminals,” stating: “We believe this legislation was passed to purposely prohibit the expenditure of Federal funds to aid those who are violating the law.” *Id.*

The Record in this case reveals that by letter dated June 18, 1999 the Social Security Office of the Inspector General, Office of Investigations, in Boston notified the Social Security Field Office in Bangor, Maine, that results of an investigation revealed that the plaintiff (whom the letter indicated then had a pending SSI claim) was the subject of a valid felony warrant. Record at 74. A printout of a Commonwealth of

Massachusetts Criminal Justice Information System (“CJIS”) search result was enclosed, showing that on May 7, 1990 the plaintiff was the subject of a criminal complaint alleging that on May 6, 1990 in Gardner, Massachusetts, he had committed, *inter alia*, the felony of assault with a dangerous weapon. *Id.* at 75. The printout further indicated that on November 30, 1990 the Gardner District Court issued a “default” warrant, assigned for service to the Gardner Police Department for the plaintiff’s failure to appear for a return date of June 4, 1990 following his release on personal recognizance. *Id.* The printout, dated June 16, 1999, stated: “Pursuant to Massachusetts General Laws ch. 276 s. 23A this is a TRUE WARRANT on the person named herein as contained in the Warrant Management System and printed via Criminal Justice Information System.” *Id.*

The plaintiff completed the instant SSI application in issue on or about July 23, 2001. *Id.* at 26-30.

The application contained the following preprinted language:

The following statements describe the fugitive felon/parole or probation violator status of PERRY CONGER as of May 31, 2001:

From May 31, 2001 To: continuing

I am fleeing to avoid:

Trial on a criminal charge of a felony . . .

in the state of Massachusetts.

*Id.* at 26-27. Someone (assumedly the plaintiff) handwrote next to this representation: “I am did [sic] not flee MA. to avoid trial on a criminal charge. A warrant issued is on file (inactive).” *Id.* at 26.

On August 2, 2001 the plaintiff’s claim was denied on the ground of his asserted fugitive-felon status. *Id.* at 31-36. Through attorney Francis M. Jackson, he requested reconsideration. *Id.* at 37-38. According to an agency “Report of Contact,” attorney Jackson contacted a Social Security District Office

on August 27, 2001 in connection with the reconsideration request and noted that he felt the outstanding warrant was a clerical error. *Id.* at 40. Per the Report of Contact, the District Office advised Jackson to attempt to obtain proof and submit it as soon as possible. *Id.* This was followed by a letter to the plaintiff dated August 31, 2001 stating: “You allege that you are not fleeing to avoid trial or jail or prison after conviction. You must provide the documentation from the agency in Massachusetts that issued the warrant so that your application can be re-opened and revised.” *Id.* at 39. The letter further warned: “If you do not provide this information by September 09, 2001 I will deny you [sic] Request for Reconsideration.” *Id.* Per a handwritten notation on the letter, the deadline was extended to September 17, 2001 at Jackson’s request. *Id.* By letter dated September 18, 2001 the request for reconsideration was denied, with the explanation: “Neither you nor your attorney have [sic] been able to provide the required information.” *Id.* at 41.

The plaintiff then requested a hearing before an administrative law judge. *Id.* at 44. A notice of hearing issued, advising, “The hearing concerns whether there is a valid felony warrant pending against the claimant.” *Id.* at 87. The notice also stated, among other things: “A vocational expert will testify at your hearing.” *Id.* On June 18, 2002 a hearing was held before an administrative law judge at which the plaintiff appeared, represented by Jackson. *Id.* at 18. A vocational expert also was present but was not called upon to testify. *Id.* at 16-25. In his opening remarks, Jackson stated, among other things: “Your Honor, as you’ve indicated in our brief conference before we went on record the issue in this case is whether Mr. Conger is a fleeing felon within the meaning of 42 U.S.C. Section 1382E4 as amplified in the regulations at 416.202F1.” *Id.* at 19.

The plaintiff then testified that (i) he resided in Shirley, Maine, where he had lived since 1990, (ii) at the beginning of 1990 he was living in Massachusetts, (iii) “at some point that year” he prepared to move to

Maine, (iv) “at that time” there was an incident that led to the filing of some criminal charges against him, (v) those charges included assault with a dangerous weapon, (vi) at the time he moved to Maine in 1990 there were no charges, warrants or “anything of that sort” outstanding against him, (vii) at some point after he moved to Maine he became aware that there was an outstanding warrant against him in Massachusetts, (viii) the Massachusetts authorities did not come and get him in relation to the warrant, but instead told him “just don’t come back,” (ix) he had called someone in the Massachusetts probation department the previous year and was informed, “we ain’t got time for this,” (x) there had been no attempt to extradite him from Maine to Massachusetts, and (xi) he doubted he would be prosecuted on the old charge if he returned to Massachusetts, although he “might get a fine, you know, from leaving the courtroom. I did show up in court that day[.]” *Id.* at 20-22. Given a chance to make a final statement, the plaintiff said: “I can honestly say that I never fled. I was never afraid of it. I didn’t flee. I moved here before and it happened, it happened in between and fleeing was not the idea.” *Id.* at 24.

In a section setting forth his rationale for denial of the plaintiff’s claim, the administrative law judge noted, among other things, that:

1. The June 1999 CJIS printout evidenced the existence of a valid warrant for the plaintiff’s arrest dating back to November 30, 1990. *Id.* at 12.

2. The plaintiff and his counsel suggested at the initial and reconsideration stages of his claims processing that there was no outstanding warrant or that evidence of its existence was a clerical error, but adduced no proof of these assertions despite having been afforded an opportunity to do so. *Id.*

3. At hearing, the plaintiff did not renew the argument that there was no outstanding warrant, but rather contended that he did not in fact flee Massachusetts to avoid prosecution within the meaning of 20 C.F.R. § 416.202. *Id.*



4. This argument was unsupported either by documentation or the plaintiff's testimony, the plaintiff having admitted that he was aware of the existence of the felony complaint (having in fact shown up for court on the return date in Gardner but then having left the courtroom). *Id.* at 12-13. This undercut his earlier testimony that he was unaware of any outstanding charges or warrants against him at the time he moved to Maine. *Id.* at 13-14.

5. The plaintiff "was well aware that he was wanted for a criminal offense and knowingly fled Massachusetts to avoid prosecution." *Id.* at 14.

## **B. Plaintiff's Points of Error**

Against this backdrop, I address the plaintiff's three points of error.

### **1. Point 1: Legal Analytical Error**

As an initial matter, the plaintiff contends that the administrative law judge committed legal error in adjudicating the question of whether he fled Massachusetts for the purpose of avoiding prosecution. *See* Statement of Errors at 5-9. This first point of error subdivides into two alternative contentions: that the administrative law judge (i) lacked authority (or "competence") to determine whether the plaintiff knowingly fled Massachusetts to avoid prosecution and, (ii) in any event, could not as a matter of law appropriately have made such a finding in view of the fact that the plaintiff was not literally hiding in Maine, but readily could have been found by Massachusetts authorities. *See id.* Neither contention has merit.<sup>3</sup>

With respect to the first contention, the plaintiff relies upon two authorities: (i) the commissioner's comment, in issuing the final fugitive-felon regulations, that "[w]e have no way of determining whether or not

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<sup>3</sup> The plaintiff also noted in passing, in a footnote, that the relevant statute and regulations took effect after the date on which his warrant was issued. *See* Statement of Errors at 5 n.1. When asked at oral argument whether he intended to make any issue of this timing, counsel for the plaintiff responded that he thought the timing might raise a constitutional issue (*ex post facto* application); however, he acknowledged that he had not developed any argumentation on that point (*continued on next page*)

an individual is aware that he or she is wanted for a criminal offense and is knowingly fleeing from prosecution,” and (ii) 20 C.F.R. § 416.1339(b), the regulation regarding the timing of suspension of an existing stream of SSI benefits. The plaintiff misconstrues the import of both. In making the cited comment, the commissioner was not disavowing all competence to make such determinations but rather stating the obvious proposition that, inasmuch as individuals who are fleeing prosecution cannot realistically be expected to report that fact in connection with SSI applications or benefits (even though required to do so, *see* 20 C.F.R. § 416.708(o)), the agency must as a practical matter rely principally on official law-enforcement reports to gather such evidence. *See* Commentary, 65 Fed. Reg. at 40,493. That said, the commissioner expressly reserved the right to “explore all avenues of information which will help us [that is, the agency itself] decide whether individuals are ineligible[.]” *Id.*

Nor does section 416.1339(b), which deals with the timing of suspension of benefits, help the plaintiff. That section is inapposite. Had the commissioner intended to import these formulae into the context of pending applications for SSI benefits, she could have done so. She did not.

The plaintiff alternatively argues that the administrative law judge either misconstrued, or abdicated his responsibility to construe, the words “fleeing to avoid prosecution” in 42 U.S.C. § 1382(e)(4). *See* Statement of Errors at 6-9. He contends that the phrase “fleeing to avoid prosecution” plainly connotes a type of concealment absent in this case, citing the definition of “flee from justice” in Black’s Law Dictionary and cases construing similar language in federal criminal statutes. *See id.* at 7-9; *United States v. Durcan*, 539 F.2d 29, 31 (9th Cir. 1976) (prosecution could not meet burden of establishing that suspect was “fugitive from justice” within meaning of 18 U.S.C. §§ 921(a)(15) and 922(g)(2) inasmuch as suspect had

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and was unable to cite caselaw in support of it at oral argument. I therefore deem any such issue to have been waived.

departed country for vacation a week prior to issuance of warrant for his arrest); *United States v. Wazney*, 529 F.2d 1287, 1289 (9th Cir. 1976) (suspect properly found to have been “fleeing from justice” for purposes of 18 U.S.C. § 3290 when, although by his own admission he was aware of outstanding warrant against him, he continued to conceal himself, in contrast to situations involving “unintentional and innocent delays, such, for example, as one caused by an open move to a new residence where the accused is readily accessible to careful law enforcement officers.”); Black’s Law Dictionary 639 (6th ed. 1990) (defining “flee from justice” as “[r]emoving one’s self from or secreting one’s self within jurisdiction wherein offense was committed to avoid arrest; or leaving one’s home, residence, or known place of abode, or concealing one’s self therein, with intent, in either case, to avoid arrest, detention, or punishment for some criminal offense.”).

This argument again misses the mark. Assuming *arguendo* that the phrase “fleeing to avoid prosecution” in 42 U.S.C. § 1382(e)(4) should be construed to necessitate a finding of flight with intent to avoid arrest or prosecution, the administrative law judge made such a finding. See Record at 14 (determining that plaintiff “was well aware that he was wanted for a criminal offense and knowingly fled Massachusetts to avoid prosecution.”). To the extent the plaintiff argues that, as a matter of law, he cannot be found to have concealed himself in that he (i) moved to Maine because he could no longer afford to live in Massachusetts, (ii) continued to live in Maine openly with his wife and under his own name, making various disability applications to Social Security, and (iii) contacted Massachusetts authorities on two occasions, see Statement of Errors at 8, this contention is equally unpersuasive. As an initial matter, certain of these asserted facts – that he moved to Maine because he could no longer afford to live in Massachusetts and lived “openly” with his wife in Maine – are unsupported by evidence of record. In any event, per Black’s Law Dictionary, one “flees from justice” when, with intent to avoid prosecution or punishment, one

either (i) secretes oneself within the jurisdiction in which the offense was committed or (ii) leaves that jurisdiction. It is undisputed that the plaintiff left the jurisdiction of Massachusetts after the charges in question were brought, and the administrative law judge supportably found (as discussed below) that he left with intent to avoid prosecution.

## **2. Point 2: Due-Process Deprivation**

I turn next to the plaintiff's second point of error: that he received constitutionally inadequate notice of the nature of the issues to be aired at his hearing, depriving him of an adequate opportunity to be heard. *See* Statement of Errors at 9-10; *see also, e.g., Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard. . . . In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination [of benefits], and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.") (citations and internal quotation marks omitted).

This point is patently meritless. From the date the plaintiff first filed his application, he was put on notice of the existence of an issue concerning his alleged fugitive-felon status, which formed the basis for denial of his claim both initially and on reconsideration. Following the initial denial, the plaintiff engaged counsel experienced in Social Security matters, who promptly sought to address the fugitive-felon issue, pressing the point that the evidence of the existence of an outstanding warrant was a clerical error. The plaintiff was notified in writing that his hearing would concern "whether there is a valid felony warrant pending against [him]," Record at 87, the very issue that the plaintiff, through counsel, had pressed on reconsideration. Although the notice of hearing omitted a chapter-and-verse recitation of applicable statutes and regulations and mentioned that a vocational expert would testify at hearing (thus suggesting that the medical merits would be reached), it was not so confusing as to be misleading. Indeed, the transcript of the

plaintiff's hearing betrays no hint of surprise, doubt or confusion on the part of the plaintiff or his counsel as to its subject matter.

### **3. Point 3: Lack of Substantial Evidence**

The plaintiff finally assails the decision of the administrative law judge on the ground that it is unsupported by substantial evidence. *See* Statement of Errors at 11-12. He contends that (i) the mere existence of the outstanding warrant is insufficient to show flight to avoid prosecution, and (ii) the administrative law judge was obliged to accept his own explanation for his move to Maine, which stood uncontradicted. *See id.* I disagree with the latter proposition.

Although the plaintiff testified that at the time he moved to Maine there were no charges, warrants or “anything of that sort” outstanding against him, Record at 21, the administrative law judge supportably found this statement to have been false, *see id.* at 12-13. The CJIS printout, the accuracy of which the plaintiff does not challenge, reveals that a criminal complaint issued against him on May 7, 1990 with a return date of June 4, 1990, that he was released on personal recognizance and that he did not appear on the assigned date to answer the charges against him. The plaintiff admitted at hearing that he showed up at court but left the courtroom. Thus, the administrative law judge supportably found that the plaintiff left Massachusetts fully aware of the pendency of unresolved criminal charges against him in that state. Given the circumstances of the plaintiff's departure and his questionable credibility, the administrative law judge drew a reasonable inference that he fled Massachusetts to avoid prosecution on the pending charges.<sup>4</sup>

Further, although the plaintiff testified that he had subsequently contacted Massachusetts authorities, whom he said showed no interest in pursuing him, he was unable (despite being afforded ample opportunity

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<sup>4</sup> Also of note, the plaintiff's testimony as to why and when he left Massachusetts to move to Maine was vague. *See (continued on next page)*

to do so) to adduce evidence to contradict the validity of the CJIS representation that he remains subject to a valid warrant for his arrest. Thus, other than satisfying himself that as a practical matter he is unlikely to be prosecuted, he evidently has done nothing to clear the pending charges against him. Under those circumstances, he properly was found ineligible for SSI benefits. *See* Commentary, 65 Fed. Reg. at 40,494 (noting, in response to comment that parole violation should not trigger fugitive-felon rule if authorities do nothing for ten years to address it, “Congress did not provide exceptions to this rule based on the nature of the originating crime or the State’s reluctance to extradite the individual. We believe this legislation was passed to purposely prohibit the expenditure of Federal funds to aid those who are violating the law.”).<sup>5</sup>

## II. Conclusion

For the foregoing reasons, I recommend that the decision of the commissioner be **AFFIRMED**.

### NOTICE

*A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.*

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Record at 22.

<sup>5</sup> At oral argument, counsel for the commissioner stated that the Social Security Administration consistently has taken the position that evidence of the existence of an outstanding arrest warrant alone suffices to evidence fleeing-felon status regardless of a claimant’s subjective intentions. *See, e.g.*, Program Operations Manual System SI 00530.030, 2003 WL 22245598 (SSA-POMS) (“As long as a United States warrant or court order is active, SSA considers an individual to be “fleeing” for SSI eligibility purposes. This is true even if the law enforcement agency is unwilling to extradite.”). Counsel argued that pursuant to *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), this is a permissible construction of the governing statute. Be that as it may, the decision of the administrative law judge in this case did not rest on that policy; rather, the administrative law judge addressed, and made supportable factual findings concerning, the plaintiff’s argument that he did not in fact knowingly flee Massachusetts to avoid prosecution. Inasmuch as I recommend that the decision of the administrative law judge be affirmed on that basis, I do not consider the argument that it might be affirmed on the basis of the existence of the outstanding arrest warrant alone.

Dated this 15th day of December, 2003.

/s/ David M. Cohen  
David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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V.

**Defendant**

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